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29 CFR Ch. V (7–1–02 Edition)

of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA). These regulations are also applicable to the employment of other workers hired by employers of H-2A workers in the occupations and for the period of time set forth in the job order approved by ETA as a condition for granting H-2A certification, including any extension thereof. Such other workers hired by H-2A employers are hereafter referred to as engaged in corresponding employment.

§ 501.1 Purpose and scope.

(a) *Statutory standard.* Section 216(a) of the INA provides that—

(1) A petition to import an alien as an H-2A worker (as defined in subsection (i)(2)) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(B) The employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(b) *Role of the ETA, USES.* The issuance and denial of labor certification under section 216 of the INA has been delegated by the Secretary of Labor to the Employment and Training Administration (ETA). In general, matters concerning the obligations of an employer of H-2A workers related to the labor certification process are administered and enforced by ETA. Included within ETA's jurisdiction are such issues as whether U.S. workers were available, whether positive recruitment was conducted, whether there was a strike or lockout, the methodology for establishing adverse effect wage rates, whether workers' compensation insurance was provided, whether employment was offered to U.S. workers for up to 50 percent of the contract period and other similar matters. The regulations pertaining to the issuance and denial of labor certification for temporary alien workers by the Employment and Training Administration are found in title 20 CFR part 655.

(c) *Role of ESA, Wage and Hour Division.* Section 216(g)(2) of the INA provides that—

[T]he Secretary of Labor is authorized to take such actions including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

Certain investigation, inspection and law enforcement functions to carry out the provisions of section 216 of the INA have been delegated by the Secretary of Labor to the Employment Standards Administration (ESA), Wage and Hour Division. In general, matters concerning the obligations of the work contract between an employer of H-2A workers and the H-2A workers and other workers in corresponding employment hired by H-2A employers are enforced by ESA. Included within the enforcement responsibility of ESA, Wage and Hour Division are such matters as the payment of required wages, transportation, meals and housing provided during the employment. The Wage and Hour Division has the responsibility to carry out investigations, inspections and law enforcement functions and in appropriate instances impose penalties, seek injunctive relief and specific performance of contractual obligations, including recovery of unpaid wages.

(d) *Effect of regulations.* The amendments to the INA made by title III of the IRCA apply to petitions and applications filed on and after June 1, 1987. Accordingly, the enforcement functions carried out by the Wage and Hour Division under the INA and these regulations apply to the employment of any H-2A worker and any other workers hired by H-2A employers in corresponding employment as the result of any petition or application filed with the Department on and after June 1, 1987.

§ 501.2 Coordination of intake between DOL agencies.

Complaints received by ETA, or any State Employment Service Agency regarding contractual H-2A labor standards between the employer and the employee will be immediately forwarded

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to the appropriate Wage and Hour office for appropriate action under these regulations.

§ 501.3 Discrimination prohibited.

No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person who has:

(a) Filed a complaint under or related to section 216 of the INA or these regulations;

(b) Instituted or caused to be instituted any proceedings related to section 216 of the INA or these regulations;

(c) Testified or is about to testify in any proceeding under or related to section 216 of the INA or these regulations;

(d) Exercised or asserted on behalf of himself or others any right or protection afforded by section 216 of the INA or these regulations.

(e) Consulted with an employee of a legal assistance program or an attorney on matters related to section 216 of the INA (8 U.S.C. 1186), or to this subpart or any other DOL regulation promulgated pursuant to section 216 of the INA.

Allegations of discrimination in employment against any person will be investigated by Wage and Hour. Where Wage and Hour has determined through investigation that such allegations have been substantiated appropriate remedies may be sought. Wage and Hour may assess civil money penalties, seek injunctive relief, and/or seek additional remedies necessary to make the employee whole as a result of the discrimination, as appropriate, and may recommend to ETA that labor certification of any violator be denied in the future.

§ 501.4 Waiver of rights prohibited.

No person shall seek to have an H-2A worker, or other worker employed in corresponding employment by an H-2A employer, waive rights conferred under section 216 of the INA or under these regulations. Such waiver is against public policy. Any agreement by an employee purporting to waive or modify any rights inuring to said person under the Act or these regulations shall be void as contrary to public pol-

icy, except that a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or these regulations. This does not prevent agreements to settle private litigation.

§ 501.5 Investigation authority of Secretary.

(a) *General.* The Secretary, either pursuant to a complaint or otherwise, shall, as may be appropriate, investigate and, in connection therewith, enter and inspect such places and vehicles (including housing) and such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Secretary to determine compliance with contractual obligations under section 216 of the INA or these regulations.

(b) *Failure to permit investigation.* Where any person using the services of an H-2A worker does not permit an investigation concerning the employment of his or her workers the Wage and Hour Division shall report such occurrence to ETA and may recommend denial of future labor certifications to such person. In addition, Wage and Hour may take such action as may be appropriate, including the seeking of an injunction or assessing civil money penalties, against any person who has failed to permit Wage and Hour to make an investigation.

(c) *Confidential investigation.* The Secretary shall conduct investigations in a manner which protects the confidentiality of any complainant or other person who provides information to the Secretary in good faith.

(d) *Report of violations.* Any person may report a violation of the work contract obligations of section 216 of the INA or these regulations to the Secretary by advising any local office of the Employment Service of the various States, any office of ETA, any office of the Wage and Hour Division, ESA, U.S. Department of Labor, or any other authorized representative of the Secretary. The office or person receiving such a report shall refer it to the appropriate office of the Wage and Hour Division, ESA, for the area in which